

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AUNTRELL BROOKS,

Defendant.

No. CR 12-117-01 CW

ORDER DENYING MOTION
FOR MODIFICATION OF
SENTENCE

(Docket No. 33)

On July 18, 2014, the United States Sentencing Commission (USSC) promulgated an amendment to Policy Statement 1B1.10, authorizing retroactive changes to the guidelines applicable to sentences imposed for certain drug-related convictions. Defendant Auntrell Brooks has filed a pro se motion to modify his term of imprisonment, citing the USSC's amendment. Docket No. 33. On February 2, 2015, the Office of the Federal Public Defender filed a notice of non-intervention, stating that it had reviewed Defendant's request and that it would neither pursue appointment of counsel nor intervene in the matter. Docket No. 34. On February 10, 2015, the United States Probation Office (USPO) filed a Sentence Reduction Investigation Report. Docket No. 35. In its Report, the USPO informs the Court that Defendant is not eligible for a modification of sentence because his sentencing guidelines were calculated based upon a felon in possession of firearms charge and not the drug-related charge.

1 On February 23, 2012, a two-count indictment was filed
2 against Defendant. Docket No. 1. Count One of the indictment
3 charges a violation of 18 U.S.C. § 922(g)(1), being a felon in
4 possession of a firearm. Count Two of the indictment charges a
5 violation of 21 U.S.C. § 841(a)(1), possession with intent to
6 distribute and distribution of a controlled substance. On June
7 19, 2012, the Court accepted Defendant's plea of guilty to both
8 counts. Docket No. 26. The plea agreement calculates an Adjusted
9 Offense Level of 23, utilizing USSG § 2K2.1(a)(4)(B) to begin with
10 a Base Offense Level of 20. USSG § 2K2.1(a)(4)(B) corresponds to
11 the firearms charge. Defendants' sentencing guideline range was
12 calculated to be 57-71 months, based upon an adjusted offense
13 level of 23 and a Criminal History Category of III. Docket No.
14 27. On September 10, 2012, the Court sentenced Defendant to a
15 term of imprisonment of 60 months on each of counts one and two,
16 to run concurrently. Docket No. 32.

17 The Court agrees with the USPO's conclusion that Defendant is
18 ineligible for a modification of his sentence. The Court
19 sentenced Defendant according to a guideline range calculated for
20 his firearms charge and sentences for firearms-related charges
21 were unaffected by the above-cited USSC amendment. Accordingly,
22 Defendant's motion is DENIED.

23
24 IT IS SO ORDERED.

25
26 Dated: February 18, 2015

27 
28 CLAUDIA WILKEN
United States District Judge